

CHILDREN’S MEDICAL GROUP, INC.,	§	
	§	
Plaintiff,	§	
	§	
	§	
v.	§	Case No. 2:17-cv-1250
	§	
LAKE COUNTRY PEDIATRICS, S.C.,	§	TRIAL BY JURY DEMANDED
	§	
Defendant.	§	
	§	

Plaintiff Children’s Medical Group, Inc., d/b/a “Children’s Hospital of Wisconsin
Delafield Pediatrics” (“Children’s Medical Group”), by its attorneys, Quarles & Brady LLP,
hereby states its Complaint for Declaratory Judgment against Defendant Lake Country
Pediatrics, S.C. (“Lake Country Pediatrics”) as follows:

1. Children's Medical Group is a Wisconsin non-stock corporation with its principal place of business located at 999 North 92nd Street, C760, Wauwatosa, Wisconsin 53226.
2. Children's Hospital and Health System, Inc. is the sole member of Children's Medical Group, which collectively do business as Children's Hospital of Wisconsin.
3. Lake Country Pediatrics is a Wisconsin service corporation with its principal place of business located at 970 South Silver Lake Street, Unit 102, Oconomowoc, Wisconsin 53066.

JURISDICTION AND VENUE

4. This is an action for a judgment under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, declaring that Children's Medical Group's use of the "Delafield Pediatrics" name does not constitute trademark infringement or unfair competition under the Lanham Act, 15 U.S.C. § 1125(a)(1)(A), or Wisconsin common law.

5. This Court has jurisdiction under 28 U.S.C. §§ 2201 and 2202 to declare the rights of the parties because this action presents a case of actual controversy within this Court's jurisdiction. The controversy concerns Children's Medical Group's lawful use of the "Delafield Pediatrics" name.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a)-(b).

7. This Court has supplemental jurisdiction over all state law claims under 28 U.S.C. § 1367(a).

8. This Court has personal jurisdiction over Lake Country Pediatrics under Wis. Stat. § 801.05 because Lake Country Pediatrics is a Wisconsin service corporation that resides within the Eastern District of Wisconsin and has engaged in substantial and not isolated activities within Wisconsin and this judicial district.

9. Venue in the Eastern District of Wisconsin is proper under 28 U.S.C. § 1391(b)(1)-(2).

FACTS GIVING RISE TO THIS ACTION

Children's Medical Group

10. Founded in 1894, Children's Hospital of Wisconsin is the region's only independent health system dedicated solely to the health and well-being of children. Children's

Hospital of Wisconsin provides primary care, specialty care, urgent care, emergency care, community health services, foster and adoption services, child and family counseling, child advocacy services, and family resource centers to children from Wisconsin, Michigan, Illinois, and beyond.

11. Children's Hospital of Wisconsin comprises two hospital facilities in Milwaukee and Neenah and over 70 specialty clinics, including more than 20 primary care offices throughout southeast Wisconsin. These primary care locations support over 80 board-certified pediatricians and more than 250,000 patient visits annually. The primary care offices are operated by Children's Medical Group.

12. Children's Medical Group has a longstanding practice, in some cases as long as 20 years, of operating its primary care offices under names that pair the term "pediatrics" with the city or geographic area in which the office is located, *e.g.*, "Bluemound Pediatrics," "Cedarburg Pediatrics," "Franklin Pediatrics," "Jackson Pediatrics," "Kenosha Pediatrics," "Mayfair Pediatrics," "Mount Pleasant Pediatrics," "Oak Creek Pediatrics," "Pewaukee Pediatrics," etc. These names are used in close connection with the registered house marks owned by Children's Hospital and Health System, Inc., including CHILDREN'S HOSPITAL OF WISCONSIN, U.S. Registration Nos. 1,793,027 and 1,816,225.

13. Consistent with that practice, Children's Medical Group operates one such primary care location under the "Delafield Pediatrics" name. Children's Medical Group opened its Delafield Pediatrics office in December 2014.

14. The Delafield Pediatrics office features four board-certified pediatricians who provide dedicated medical care for children of all ages. The Delafield Pediatrics office is located

within Children's Medical Group's Delafield Clinic, located at 3195 Hillside Drive in Delafield, Wisconsin.

Lake Country Pediatrics

15. Lake Country Pediatrics provides primary medical care to children from northwestern Waukesha County, Wisconsin, an area commonly referred to by local residents as "Lake Country."

16. Upon information and belief, Lake Country Pediatrics was founded in 1996 by Dr. Gregory M. Moyer.

17. Upon information and belief, Lake Country Pediatrics employs four board-certified pediatricians and operates two clinics: one located at 970 South Silver Lake Street, Unit 102 in Oconomowoc, Wisconsin and another located at 2574 Sun Valley Drive, Suite 207 in Delafield, Wisconsin.

Lake Country Pediatrics' Assertion of Alleged DELAFIELD PEDIATRICS Trademark

18. On or around May 4, 2017, Dr. Moyer contacted Children's Hospital of Wisconsin via e-mail to the President of Children's Medical Group, stating that Lake Country Pediatrics has been "reviewing things" and noticed that the "Delafield Pediatrics" name is "coming up under the CHW [Children's Hospital of Wisconsin] clinic in Delafield." Dr. Moyer asserted for the first time that Children's Hospital of Wisconsin "cannot call themselves Delafield Pediatrics because LCP [Lake Country Pediatrics] owns the name."

19. Following an internal inquiry to confirm that there was no trademark violation, on July 20, 2017, the President of Children's Medical Group contacted Lake Country Pediatrics' office manager, Lauri Potter, and informed her that the position of Children's Medical Group had

not changed and provided her with contact information for the legal department at Children's Hospital of Wisconsin to get additional detail.

20. On or around August 11, 2017, over three months after Dr. Moyer's initial e-mail, Children's Hospital of Wisconsin received a letter from counsel for Lake Country Pediatrics, by which Lake Country Pediatrics claimed ownership of the "Delafield Pediatrics" name and accused Children's Hospital of Wisconsin of trademark infringement and unfair competition. Lake Country Pediatrics demanded that Children's Hospital of Wisconsin cease all use of the "Delafield Pediatrics" name "as well as any other confusingly similar trademark." A true and correct copy of Lake Country Pediatrics' August 11, 2017 letter is attached hereto as **Exhibit A**.

21. Lake Country Pediatrics sent a follow-up letter to Children's Hospital of Wisconsin on August 23, 2017, renewing its demand that Children's Hospital of Wisconsin cease all use of the "Delafield Pediatrics" name. A true and correct copy of Lake Country Pediatrics' August 23, 2017 letter is attached hereto as **Exhibit B**.

22. By letter that same day, Children's Hospital of Wisconsin responded to Lake Country Pediatrics' August 11, 2017 letter. Children's Hospital of Wisconsin denied that Lake Country Pediatrics has trademark rights in the "Delafield Pediatrics" name, explaining that the name is generic and descriptive. A true and correct copy of Children's Hospital of Wisconsin's August 23, 2017 letter is attached hereto as **Exhibit C**.

23. Upon information and belief, on or around August 25, 2017, after receiving Children's Hospital of Wisconsin's August 23, 2017 letter, Lake Country Pediatrics filed with the United States Patent and Trademark Office ("PTO") an application under 15 U.S.C. § 1051(a), U.S. Serial No. 87/584,086, for registration of the trademark DELAFIELD

PEDIATRICS for use in connection with healthcare and pediatric healthcare services in International Class 44.

24. Lake Country Pediatrics' trademark application claims a date of first use of October 31, 1998 and a date of first use in commerce of November 9, 2006.

25. Upon information and belief, Lake Country Pediatrics has sought registration of the DELAFIELD PEDIATRICS mark on the PTO's Principal Register under 15 U.S.C. § 1052(f), claiming that the mark, while not inherently distinctive, has become distinctive of Lake Country Pediatrics' pediatric healthcare services as a result of Lake Country Pediatrics' alleged "substantially exclusive and continuous use of the mark" in commerce for longer than the preceding five years.

26. Subsequent to the filing of its trademark application, by letter dated August 28, 2017, Lake Country Pediatrics responded to Children's Hospital of Wisconsin's August 23, 2017 letter, denying that the "Delafield Pediatrics" name is generic and affirmatively asserting that the name has acquired secondary meaning. Lake Country Pediatrics threatened that if Children's Hospital of Wisconsin does not cease use of the "Delafield Pediatrics" name within the next three days, by August 31, 2017, then Lake Country Pediatrics "will be taking further action to enforce its rights," noting that it is "prepared to enforce them in a court of law if that becomes necessary." A true and correct copy of Lake Country Pediatrics' August 28, 2017 letter is attached hereto as **Exhibit D**.

27. By letter dated September 11, 2017, Children's Hospital of Wisconsin responded to Lake Country Pediatrics' August 28, 2017 letter. Children's Hospital of Wisconsin explained that its position is unchanged because Lake Country Pediatrics has no trademark rights in the

“Delafield Pediatrics” name. A true and correct copy of Children’s Hospital of Wisconsin’s September 11, 2017 letter is attached hereto as **Exhibit E**.

Lake Country Pediatrics’ Use of “Delafield Pediatrics” Name as Generic Identifier of Delafield Location

28. Upon information and belief, Lake Country Pediatrics uses the “Delafield Pediatrics” name as only a generic identifier of its pediatric clinic located in Delafield, Wisconsin.

29. Lake Country Pediatrics, through Dr. Moyer, registered the domain name of lakecountrypediatrics.com on or around January 5, 2009.

30. Since 2009, Lake Country Pediatrics has consistently used its website at www.lakecountrypediatrics.com to market itself as having two locations: an “office” or “clinic” located in Oconomowoc, Wisconsin and an “office” or “clinic” located in Delafield, Wisconsin. Attached as **Exhibit F** is a true and correct copy of screen-grabs of the website at www.lakecountrypediatrics.com, showing the homepage at representative points of time between October 17, 2009 and November 13, 2016.

31. In or around 2014, Lake Country Pediatrics engaged a third-party marketing and advertising agency to help promote Lake Country Pediatrics’ two clinics. The marketing and advertising agency created and published billboards and commercials for Lake Country Pediatrics, none of which makes reference to the “Delafield Pediatrics” name. Instead, the billboards and commercials make reference only to the fact that Lake Country Pediatrics has clinics located in Oconomowoc and Delafield. Attached as **Exhibit G** is a true and correct copy of a screenshot of the marketing and advertising agency OCreative’s website, captured on September 8, 2017, showing an image of a billboard created for Lake Country Pediatrics.

32. Upon information and belief, on or around July 28, 2017, approximately two weeks before sending its August 11, 2017 letter to Children's Hospital of Wisconsin, Lake Country Pediatrics registered the domain name of delafieldpediatrics.com.

33. Despite registering the domain name of delafieldpediatrics.com, Lake Country Pediatrics does not maintain a website at www.delafieldpediatrics.com. Instead, when attempting to visit the website at www.delafieldpediatrics.com, users are automatically redirected to Lake Country Pediatrics' website at www.lakecountrypediatrics.com.

34. The "Delafield Pediatrics" name does not prominently appear on the homepage of Lake Country Pediatrics' website at www.lakecountrypediatrics.com. Instead, the name is featured under the "Locations" drop-down on the homepage's menu bar, underneath the name "Oconomowoc Pediatrics." Attached as **Exhibit H** is a true and correct copy of a screenshot of the current homepage of the website at www.lakecountrypediatrics.com, captured on September 7, 2017.

35. Upon information and belief, Lake Country Pediatrics has at all times used the name "Lake Country Pediatrics," not the "Delafield Pediatrics" name, on the storefront of its Delafield location. Attached as **Exhibit I** is a true and correct copy of an image of the storefront of Lake Country Pediatrics' Delafield location, captured in or around July 2015.

36. Lake Country Pediatrics did not begin to market its Delafield location online and through social media as DELAFIELD PEDIATRICS™ until August 2017. Attached as **Exhibit J** is a true and correct copy of a screenshot of the "Locations" page of the website at www.lakecountrypediatrics.com, captured on September 7, 2017. Attached as **Exhibit K** is a true and correct copy of a screenshot of the Facebook business page associated with Lake Country Pediatrics' Delafield location, captured on September 7, 2017.

37. To the extent that Lake Country Pediatrics has used the “Delafield Pediatrics” name, if at all, the use has been concurrent with Children’s Medical Group’s use of the “Delafield Pediatrics” name since 2014, without resulting in any patient confusion.

Count One
DECLARATORY JUDGMENT

38. Children’s Medical Group realleges and incorporates by reference paragraphs 1 through 37 above as if fully set forth herein.

39. There is an actual and justiciable controversy within the meaning of 28 U.S.C. §§ 2201 and 2202 between Children’s Medical Group and Lake Country Pediatrics regarding Children’s Medical Group’s lawful use of the “Delafield Pediatrics” name.

40. At least five letters have been exchanged between the parties regarding Children’s Medical Group’s lawful use of the “Delafield Pediatrics” name, and Lake Country Pediatricians has threatened legal action if Children’s Medical Group does not promptly cease all use of the “Delafield Pediatrics” name. Children’s Medical Group’s purported inability to use the generic and descriptive name of “Delafield Pediatrics” would severely hamper its ability to communicate to patients the nature of its services.

41. Children’s Medical Group’s use of the “Delafield Pediatrics” name does not constitute trademark infringement or unfair competition because Lake Country Pediatrics’ use of the “Delafield Pediatrics” name is generic. Lake Country Pediatrics is using the “Delafield Pediatrics” name to refer to the genus of which Lake Country Pediatrics’ service is a member, namely, pediatric care for patients in the city of Delafield.

42. Alternatively, Children’s Medical Group’s use of the “Delafield Pediatrics” name does not constitute trademark infringement or unfair competition because Lake Country

Pediatrics' use of the "Delafield Pediatrics" name is descriptive, and the name has not acquired secondary meaning.

43. Alternatively, Children's Medical Group's use of the "Delafield Pediatrics" name does not constitute trademark infringement or unfair competition because Children's Medical Group's own use of "Delafield Pediatrics" name is generic. Children's Medical Group's use of the "Delafield Pediatrics" name is consistent with its longstanding practice of operating its primary care offices under names that pair the term "pediatrics" with the city or geographic area at which the office is located.

44. Alternatively, Children's Medical Group's use of the "Delafield Pediatrics" name does not constitute trademark infringement or unfair competition because Children's Medical Group's own use of "Delafield Pediatrics" name is descriptive. Children's Medical Group's use of the "Delafield Pediatrics" name is consistent with its longstanding practice of operating its primary care offices under names that pair the term "pediatrics" with the city or geographic area at which the office is located.

45. For at least the foregoing reasons, Children's Medical Group is entitled to a declaration that its use of the "Delafield Pediatrics" name does not constitute trademark infringement or unfair competition under the Lanham Act, 15 U.S.C. § 1125(a)(1)(A), or Wisconsin common law.

PRAYER FOR RELIEF

WHEREFORE, Children's Medical Group requests relief from this Court as follows:

1. A judgment declaring that Children's Medical Group's use of the "Delafield Pediatrics" name does not constitute trademark infringement or unfair competition under the Lanham Act, 15 U.S.C. § 1125(a)(1)(A);

2. A judgment declaring that Children's Medical Group's use of the "Delafield Pediatrics" name does not constitute trademark infringement or unfair competition under Wisconsin common law;

3. A declaration that this is an exceptional case and an award of attorneys' fees, disbursements, and costs to Children's Medical Group pursuant to 15 U.S.C. § 1117; and

4. Such other and further relief as this Court may deem just and proper.

JURY DEMAND

Children's Medical Group demands a trial by jury on all issues properly tried thereto.

Dated this 15th day of September, 2017.

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